



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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**Committee on the Elimination of All Forms
of Racial Discrimination**

Seventy-seventh session
2 to 27 August 2010

Opinion

Communication No. 43/2008

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| <u>Submitted by:</u> | Saada Mohamad Adan |
| <u>Alleged victim:</u> | The petitioner |
| <u>State party:</u> | Denmark |
| <u>Date of the communication:</u> | 15 July 2008 (initial submission) |
| <u>Documentation references:</u> | Special Rapporteur's rule 94 decision, transmitted to the State party on 2 October 2008 (not issued in document form) |
| <u>Date of present decision:</u> | 13 August 2010 |

*Made public by decision of the Committee on the Elimination of Racial Discrimination.

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| <i>Subject matter:</i> | Right for effective mechanisms of protection |
| <i>Procedural issues:</i> | Exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Right for effective mechanisms of protection against racial statements |
| <i>Articles of the Covenant:</i> | article 6, read together with article 2, paragraph 1 (d), and article 4 |

[Annex]

Annex

Opinion of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (seventy-seventh session)

concerning

Communication No. 43/2008

Submitted by: Saada Mohamad Adan
Alleged victim: The petitioner
State party: Denmark
Date of the communication: 15 July 2008 (initial submission)

Meeting on 13 august 2010,

Having concluded its consideration of communication No. 43/2008, submitted to the Committee on the Elimination of All Forms of Racial Discrimination by Mr. Saada Mohamad Adan under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination.

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Draft Opinion

[*Note:* Explanatory footnotes in brackets will be removed from the text of the final decision.]

1. The petitioner is Ms. Saada Mohamad Adan, a national of Somalia, who is currently residing in Denmark. She claims to be the victim of violations by Denmark of her rights under article 6, read together with article 2, paragraph 1 (d), and article 4, of the International Convention on the Elimination of All Forms of Racial Discrimination. She is represented by counsel, the Documentation and Advisory Centre on Racial Discrimination (DRC).

The facts as submitted by the petitioner

2.1 The petitioner submits that on 23 August 2006, a radio broadcasted the discussion of the statement made by Ms. Pia Kjaersgaard, the Member of the Parliament and leader of the Danish People's Party, which stated the following: "...why should the Danish-Somali Association have any influence on legislation concerning a crime mainly committed by Somalis? And is it the intention that the Somalis are to assess whether the prohibition against female mutilation violates their rights or infringes their culture? To me, this corresponds to asking the association of paedophiles whether they have any objections to a prohibition against child sex or asking rapists whether they have any objections to an increase in the sentence for rape...". During the discussion Mr. Soren Espersen, another

member of the Parliament for the Danish People's Party, referring to the practice of female genital mutilation, stated the following: "Why should we then ask the Somalis about what they think about it when the majority of Somalis do it as something quite natural? I totally agree with her (Ms. Pia Kjaersgaard). Most precisely said."

2.2 The petitioner claims that the accusations made by such statements are false as there is no proof that the Somali parents in Denmark practice female genital mutilation against their daughters. She claims that the comparison of Somalis with paedophiles by Ms. Pia Kjaersgaard was offensive and Mr. Espersen endorsed it fully. The petitioner complained to the police. However, on 14 May 2007, the Copenhagen Metropolitan Police with the consent of the Regional Prosecutor rejected the complaint against Mr. Soren Espersen stating the following "the statement is made in a political debate in a radio broadcast, and contains mention of a factual circumstance –the tradition for female genital mutilation amongst some Somali people. The statements on paedophiles and rapists are not indicative of a comparison with Somalis".

2.3 On 16 May 2007, the DRC, on behalf of the petitioner appealed the decision to the Director of the Public Prosecution. They claimed that this decision referred only to "Muslims" (as possible victims) but did not make reference to Somalis. Thus, DRC asked the Director of the Public Prosecution to send the case back to the police and the Regional Prosecutor to reopen the case. In DRC's view the decision of 14 May 2007 could not be considered an adequate response to its complaint. The first time that the police mentioned the Somali origin of the petitioner was in their letter of 5 June 2007, but they claim it confirmed lack of investigation into the "Somali" aspect of her case, as it addressed the issue raised by another complaint submitted by group of Muslims in Denmark.

2.4 On 16 January 2008, the Director of the Public Prosecution dismissed the complaint and stated that neither the petitioner nor DRC had a right to appeal the decision by the Regional Prosecutor as the petitioner did not have individual and legal interest in the case to be considered a party to the criminal case. It also stated that DRC could not represent a person who was not a party to the criminal case, thus was not mandated to appeal the decision either.

The complaint

3.1 The petitioner claims that the above mentioned false accusations by the members of the Danish Peoples Party can stir up hatred against Somalis and that the State party failed to acknowledge the need for protection of Somalis against hate speech in order to prevent hate crimes. She claims in this case there is not only a lack of proof (which makes it a false accusation, as there is no evidence that Somali parents have practiced female mutilation against their daughters in Denmark), but also the offensive language used by the spokespeople of the Danish People's Party when they make a comparison between Somalis and paedophiles.

3.2 She claims that the State party did not fulfil its obligation to take effective action against yet another incident of hate speech by the same political party, which amount to aggravating circumstances under the Danish Criminal Code section 266 (b) and confirms systematic racist propaganda by that political party against the Somalis living in Denmark.

3.3 She complains that despite the Committee's previous findings that the State party lacks effective remedies against racist propaganda, it continues to handle identical cases in the same manner as before and Danish courts are not able to decide whether or not her and other Somalis in Denmark have a right to be protected against racial insults. She considers that by denying her right to appeal against the prosecutor's decision, she was denied the right to effective remedies against racist statements.

3.4 She claims that she has been fighting female genital mutilation practice for many years. Despite that she might now be a target of racist attacks by Danes. She refers to the findings of the Danish Board for Ethnic Equality from 1999 which stated that at that time Somalis were an ethnic group most likely to suffer from racist attacks in the streets of Denmark. The same study allegedly showed that women of Somali origin were more likely to suffer hate crimes than men. Therefore, she claims she has a personal interest in the case just like Mr. Mohammed Gelle in case 34/2004. She argues that the State party had not objected to Mr. Gelle's right to appeal, while now it does not allow her to appeal her case. As for the "victim" requirement, the author refers to the ECHR's, Human Rights Committee's and CERD's (Communication No. 30/2003) jurisprudence and claims that this requirement may be satisfied by all members of a particular group, as the mere existence of a particular legal regime may directly affect the rights of the individual victims within the group. She argues that she as a member of such a group (Somalis living in Denmark) is also a victim and as a victim she has a right to be represented by DRC.

State party's observations on admissibility and merits

4.1 On 16 February 2009 the State party submitted that the communication should be declared inadmissible as the petitioner failed to exhaust domestic remedies. Should the communication be declared admissible it submits that no violation of the Convention has occurred.

4.2 The State party reiterates the facts as submitted by the petitioner as well as her claims in relation to the invoked provisions of the Convention. It adds that on 12 September 2006, the petitioner reported Mr. Espersen to the police for violation of section 266 (b) of the Danish Criminal Code.

4.3 Another complaint was submitted by one Rune Engelbreth Larsen together with 65 others against eight named persons from the Danish People's Party for violation of section 266 b of the Criminal Code in respect of 12 different statements. Mr. Espersen was among the eight named persons against whom the complaint was initiated.

4.4 On 6 February 2007, the Commissioner of the Copenhagen Police submitted the complaints (reports) to the Regional Public Prosecutor and stated that he did not consider the statement made exceeded the particularly extensive freedom of expression enjoyed by politicians about controversial social issues and that he found no basis for interviewing the person (Mr. Espersen) about the purpose of the statement, which was in line with the political attitudes which he is known for and regularly expresses.

4.5 On 9 May 2007, the Regional Public Prosecutor decided to discontinue the investigation of all 12 incidents pursuant to section 749 (2) of the Danish Administration of Justice Act and requested the Copenhagen police to inform the interested parties about his decision and about their right to appeal the decision to the Director of Public Prosecutions.

4.6 On 14 May 2007, the Commissioner of the Copenhagen Police informed Mr. Larsen about the Regional Prosecutor's decision to discontinue the investigation as it could not be reasonably presumed that a criminal offence had been committed. In relation to Mr. Espersen, he stated that the statements were made during the political radio debate and mentioned the tradition of genital mutilation in certain Somali population groups. The statement about pedophiles and rapists does not intend to make a comparison with Somalis. The Commissioner also referred to the guidelines concerning the possibility of appealing the decision. He however added that there was no indication of circumstances showing that Mr. Larsen was entitled to appeal, but if he considered to be entitled to appeal, he could submit such appeal within four weeks of being informed of the decision, together with details why he considered himself entitled to appeal.

4.7 On 16 May 2007 DRC wrote to the Copenhagen police asking for clarification whether the letter concerned the complaint submitted by the petitioner against Mr. Espersen as the letter mentioned only Mr. Larsen's case (which also included Mr. Espersen). The DRC specifically requested whether the petitioner was entitled to appeal the decision as she was a Somali woman, addressed by Mr. Espersen in his statement.

4.8 On 5 June 2007, the Commissioner responded that the decisions by the Regional Prosecutor also concerned the complaint submitted by the DRC on behalf of the petitioner and thus the DRC was entitled to appeal the Regional Prosecutor's decision to the Director of Public Prosecutions on behalf of the petitioner, if she was a party to the case.

4.9 On 16 May 2007, the DRC appealed the decision of the Regional Prosecutor with regard to violation by Mr. Espersen of section 266 (b) of the Criminal Code to the Director of Public Prosecutions. In the appeal the DRC repeated the views expressed in the initial complaint and added that the decision by the Regional Prosecutor did not mention the facts as there was no evidence that genital mutilation was practiced among Somalis in Denmark. The decision also did not include guidelines on appeal based on the fact that the petitioner was a Somali and as she did not personally practice genital mutilation of her children, she felt personally offended and was therefore entitled to appeal. It also failed to address specifically the Somalis population in Denmark, rather it referred to "aliens with Muslim background".

4.10 On 16 January 2008, the Director of the Public Prosecution responded he did not have a reason to assume that the Somali origin of the petitioner was not taken into consideration. He added that he found that neither the petitioner nor DRC representing her can be considered entitled to appeal the decision. There was no information to substantiate that the petitioner had an individual and legal interest in the case and therefore could be considered a party entitled to appeal. Furthermore, the organizations representing individuals cannot be considered party to a case unless they have a power of attorney from a party to the case. He concludes that his decision cannot be appealed to any higher administrative authority under section 99(3) of the Administration of Justice Act.

4.11 The State party argues that the petitioner should have exhausted the remedy under section 267 and 268 of the Criminal Code, even after public prosecutors refused to institute proceedings under section 266 (b) of the Criminal Code, as the requirements for prosecution under section 267 are not identical to those for prosecution under section 266 (b) of the Criminal Code.

4.12 On the merits, the State party refers to the author's allegations that it has not fulfilled its obligations under article 2, paragraph 1 (d), article 4 and article 6 of the Convention. It acknowledges that it is not sufficient merely to declare acts of racial discrimination punishable on paper. Rather, the legal provisions must also be effectively implemented by the competent national institutions. It submits that these requirements have been fully complied with by the relevant institutions in the petitioner's case.

4.13 The State party submits that the processing and the assessment of the petitioner's complaint by the Commissioner of the Copenhagen Police and the Regional Public Prosecutor fully satisfy the requirements that could be inferred from the Convention, although the outcome was not the one wanted by the petitioner.

4.14 The State party acknowledges its duty to initiate a proper investigation on accusations and reports related to acts of racial discrimination. However, it argues that it does not follow from the Convention that prosecution should be initiated in all cases reported to the police. If no basis is found for the prosecution, it is fully in accordance with the Convention not to prosecute. This may happen, for instance, if there is no basis for assuming that prosecution will lead to conviction.

4.15 The State party emphasizes that the question in the present case was solely whether Mr. Espersen's statements could be considered to fall within section 266 (b) of the Criminal Code. There was no problem related to evidence, and the prosecutor had to perform legal assessment of the statement, which was thorough and adequate.

4.16 The State party submits that as follow-up on the opinion of the Committee in communication 34/2004 Gelle v Denmark, the Director of Public Prosecutions issued new guidelines on the investigation of cases relating to violation of section 266 (b) of the Criminal Code. The Guidelines state that the person who issues the written or oral statement should normally be interviewed in connection with reports concerning violation of section 266 (b) of the Criminal Code, unless it is obvious that section 266 (b) has not been violated.

4.17 It reiterates the Commissioner's letter to the Regional Public Prosecutor that the statements did not exceed the particularly extensive freedom of expression enjoyed by politicians about controversial social issues, that the statements were made during a political radio debate and that the statement about the pedophiles and rapists did not represent a comparison with Somalis.

4.18 By judgment of 23 August 2000, the Danish Supreme Court established that a particularly extensive freedom of expression was enjoyed by politicians about controversial social issues, although this does not entitle the set aside section 266 (b) without punishment. It refers to the jurisprudence of the European Court on Human Rights that the right to freedom of expression is extremely important to elected politicians as they represent their electorate.¹

4.19 The State party emphasizes that the statement was made during a radio debate in which Mr. Espersen supported Ms. Kjaersgaards's letter to the editor. Mr. Espersen's statement cannot be considered in violation of section 266 (b) as the Ms. Kjaersgaards's views in the letter were not assessed as a violation of section 266 (b) in the first place.

4.20 The State party submits that Mr. Espersen's statement about most Somalis carrying out genital female mutilation as something quite natural is not a statement containing an allegation of such generalizing and non-objective nature that the statement imply a violation of section 266 (b). Ms. Kjaersgaards's statement was made in 2003. Three years later in 2006, Mr. Espersen agreed with her statement. This cannot in any way be an adequate basis for the applicant's conclusion that Danish People's Party conducts a systematic racist propaganda campaign against Somalis in Denmark.

4.21 The State party submits that there was no doubt about the evidence as it had the transcript of the radio broadcast in question. Thus, it was not found necessary to interview both Mr. Espersen or the petitioner. It was not found necessary to initiate any other investigative measures to make a legal assessment of whether the statement fell within the scope of section 266 (b). Thus, it submits that the handling of the case by the public prosecutor meets the requirements under article 2, paragraph 1 (d) and article 6 of the Convention.

4.22 The State party refers to the author's claims under article 4 of the Convention that the government confirmed the false accusations made by the members of the Danish People's Party and that the party was given a carte blanche to continue its racist propaganda against Somalis. The Commissioner assessed only that the statement fell outside the scope

¹ *Roseiro Bento v. Portugal* , judgment of 18 April 2006, *Mamere v France*, judgement of 7 November 2006,

Jerusalim v. Austria, judgment of 27 February 2001.

of 266 (b). Such decision does not indicate that statements from the Danish People's Party or any other party would in all cases fall outside the scope of the Criminal Code.

4.23 The State party refers to the petitioner's reference to the study conducted in 1999 and submits that such study does not constitute a sufficient evidence to prove that the petitioner has a real reason to fear attacks or assaults, and in fact she has not stated anything about any actual attacks – verbal or physical – to which she has been subjected to due to Mr. Espersen's statement, even though almost two years had passed since the radio broadcast. Therefore, it concludes that the communication raises no issues related to article 4.

4.24 The State party refers to the petitioner's claim that neither she nor DRC were able to appeal the Commissioner's decision in violation of article 6 of the Convention. The State party submits that article 6 mentions effective protection and remedies through competent national tribunals and other state institutions; however the Convention does not imply a right for the citizens to appeal the decisions of national administrative authorities to higher administrative body. Nor does the Convention govern the question of when a citizen should be able to appeal a decision to a superior administrative body. Hence, the Convention cannot be considered a bar to a general rule to the effect that it is normally only parties to the case who are entitled to appeal a decision about criminal prosecution to superior administrative body. It submits that the Convention does not guarantee specific outcome of cases regarding allegedly racially insulting statements, but merely sets out certain requirements for the authorities' processing of such cases. Thus the possibility of reporting the incident to the police is considered an effective remedy.

4.25 The State party submits that in view of the general statements made by the petitioner in her complaint, it considers that she cannot be considered an offended party under section 266 (b), nor can she be considered to have essential, direct, individual and legal interest in the outcome of the investigation that should be considered as entitled to appeal. It also reiterates that there is no detailed evidence of the allegation that there is a risk that the applicant will suffer personal injury as a consequence of the statement made.

4.26 It reiterates that the question of the right to appeal national administrative decision is different from the question of whether the applicant satisfies the "victim" requirement under article 14 of the Convention.

4.27 It refers to the case 34/2004 Gelle v Denmark, in which due to the public interest of the matter, the Director of Public Persecutions decided to consider the appeal without determining whether the organization or person who appealed the decision was entitled to appeal. However, in the present case he found no basis for exceptionally disregarding the fact that neither DRC nor the petitioner were entitled to appeal the decision. Thus, it concludes the petitioner had an access to effective remedy under article 6 of the Convention.

4.28 The State party concludes that it is not possible to infer an obligation under the Convention to prosecute in situations that provide no basis for prosecution and that the national legislation provided remedies in accordance with the Convention and that the relevant authorities fully met their obligations in this specific case. Therefore, it concludes that there is no basis for any claim under article 2, paragraph 1 (d), article 4 or article 6 of the Convention.

Petitioner's comments

5.1 On 4 May 2009, the author submits that the State party recognized that the statements in the present case were not inoffensive, but it disregarded its own guidelines in Notice 9/2006, 2nd paragraph that "unless it is obvious that section 266 (b) has been violated" an investigation of a complaint should take place.

5.2 The State party referred to article 6 of the Convention that States parties should ensure effective protection and remedies against any violation of the Convention. She claims that the appropriate remedy which the applicant should exhaust is section 266 (b) and that it is inappropriate for the State party to refer to sections 267 and 268. Section 266 (b) refers to protection on the basis of group identity within the framework of the Convention, whereas section 267 and 268 refer to individual cases of defamation. Under the Convention prevention of racial discrimination is an obligation of society, which cannot be lifted by an individual. Thus the domestic remedies have been exhausted.

5.3 The State party has to some extent accepted the fact that it is highly offending and stigmatizing to people of Somali origin in Denmark to rapists and pedophiles. She claims that the present case is the strong proof that the State party did not comply with the Committee's decision in *Gelle v Denmark*, since Somalis still have no effective remedies or protection against false accusations, which are harmful and create hostility towards them.

5.4 She reiterates that there are no examples of female genital mutilation amongst Somali group in Denmark. She claims that the State party did not accept the data from 1999 on Somalis being the most persecuted ethnic group in Denmark, since no similar study has been made recently. The Board for Ethnic Equality who carried out the study was dismantled in 2001 and since then no similar study has been carried out due to lack of resources. It is highly inappropriate to argue that the data from 1999 are "too old" when it is the policy of the State party to stop research in this field by closing down the institutions and organizations working to document and combat racial discrimination in Denmark. The fact that she has not been personally subject to attacks in the street is not the same as to say that she can live a "normal life".

5.5 The petitioner refers to the report from the European Union Agency for Fundamental Rights, issued in April 2009, which rates the Somalis in Denmark amongst the 10 groups with the highest racist crime victimization rate during the previous 12 months.

5.6 She notes that xenophobia and islamophobia is creating an extremely hostile environment against her as she is black Somali and Muslim. In other words, she is double targeted by the Danish People's Party.

5.7 The petitioner submits that freedom of speech of a politician must be seen in context. The petitioner adds that in *Gelle v Denmark* the Committee concluded that the handling of the case by the State party was not correct. Subsequently, when Espersen's statement was reported to the police, the prosecution should have assessed the circumstances and estimate the relevant position and need of the applicant for protection.

5.8 The petitioner submits that in *Gelle v Denmark* the Committee held that the case concerned statements that were made in public which is the central focus of both the Convention and section 266 (b) of the Criminal Code and that it would be unreasonable to expect the petitioner to initiate proceedings under general provision of section 267, after having unsuccessfully invoked section 266 (b).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of All Forms of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 On the issue of exhaustion of domestic remedies, the Committee recalls that the petitioner brought a complaint under section 266 (b) of the Criminal Code, which was

rejected by the Regional Public Prosecutor and, on appeal, by the Director of Public Prosecutions. It notes that the Director of Public Prosecutions stated that his decision was final and not subject to appeal.

6.3 The Committee notes the State party's argument that the petitioner should have initiated private prosecution under the general provision on defamatory statements (section 267, 268 of the Criminal Code), as the requirements for prosecution under section 267 are not identical to those for prosecution under section 266 (b) of the Criminal Code. The Committee recalls that, in its Opinion in *Gelle v. Denmark*, it had concluded that the statements were made squarely in the public arena (radio broadcast), which is the central focus of both the Convention and section 266 (b). It would thus be unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267 or 268, after having unsuccessfully invoked section 266 (b) in respect of circumstances directly implicating the language and object of that provision. The Committee, therefore, concludes that the domestic remedies have been exhausted.

6.4 In the absence of any further obstacles to the admissibility of the petitioner's claims, the Committee declares the petition admissible, insofar as it relates to the State party's alleged failure to fully investigate the incident in question.

Consideration of merits

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under section 266 (b) of the Criminal Code. This provision criminalizes public statements by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination.

7.3 The Committee welcomes the guidelines issued by the Director of Public Prosecutions on the investigation of cases relating to violation of section 266 (b) but reiterates that it does not suffice, for purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which State parties "undertake to adopt immediate and positive measures" to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1(d), which requires States to "prohibit and bring to an end, by all appropriate means," racial discrimination, and article 6, guaranteeing to everyone "effective protection and remedies" against acts of racial discrimination.²

7.4 The Committee notes the State party's argument that the prosecutor's legal assessment was thorough and adequate and that the statements did not exceed the particularly extensive freedom of expression enjoyed by politicians about controversial social issues. It also argued that the statements cannot be considered a violation of section 266 (b) as Ms. Pia Kjaersgaard's views in the letter were not assessed as violation of section 266 (b) in the first place. The State party also contested the petitioner's claim that the Danish People's Party is granted a *carte blanche* to conduct a systematic racist

² 34/ 2004 *Gelle v Denmark*. Views adopted 06. 03.2006. paragraph 7.3

propaganda against Somalis in Denmark stating that Mr. Espersen's statement came three years after Pia Kjaersgaard's letter. It adds that the petitioner did not complain about any actual attacks –verbal or physical- following Mr. Espersen's statement.

7.5 While strongly condemning the practice of female genital mutilation as a serious violation of fundamental human rights, the Committee considers that Mr. Espersen's public support of the earlier statement by Ms. Kjaersgaard's and his statement that most Somalis carry out genital female mutilation as something quite natural were perceived as offensive. The Committee notes that these offensive statements can be understood to generalize negatively about an entire group of people based solely on their ethnic or national origin and without regard to their particular views, opinions or actions regarding the subject of female genital mutilation. It further recalls that the Regional Public Prosecutor and the police from the outset excluded the applicability of section 266 (b) to Mr. Espersen's case, without basing this assumption on thorough measures of investigation.

7.6 Similarly, the Committee recalls its previous jurisprudence³ and considers that the fact that statements were made in the context of a political debate does not absolve the State party from its obligation to investigate whether or not such statements amounted to racial discrimination. It reiterates that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas.⁴

7.7 In the light of the State party's failure to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, the Committee concludes that articles 2, paragraph 1(d), and 4 of the Convention have been violated. The lack of an effective investigation into the petitioner's complaint under section 266 (b) of the Criminal Code also violated his right, under article 6 of the Convention, to effective protection and remedies against the reported act of racial discrimination.

8. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of article 2, paragraph 1 (d), article 4 and article 6 of the Convention.

9. The Committee on the Elimination of Racial Discrimination recommends that the State party should grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The Committee recalls its General Recommendation 30 which recommends that States parties take "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians [...]"⁵ Taking into account the Act of 16 March 2004, which, inter alia, introduced a new provision in section 81 of the Criminal Code whereby racial motivation constitutes an aggravating circumstance, the Committee recommends that the State party should ensure that the existing legislation is effectively applied so that similar violations do not occur in the future. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.

10. The Committee wishes to receive from Denmark, within six months, information about the measures taken to give effect to the Committee's opinion.

³ 34/ 2004 *Gelle v Denmark*. Views adopted 06. 03.2006

⁴ CERD, General Recommendation XV: Organized violence based on ethnic origin (art. 4), at paragraph 4.

⁵ CERD, General Recommendation 30: Discrimination against non-citizens, at paragraph 12.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
